

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

WEDNESDAY, THE 21ST MARCH 2007 / 30TH PHALGUNA 1928

WA.No. 527 OF 2005()

AGAINST THE JUDGEMENT IN WPC.37565/2003 DATED 17/12/2004

APPELLANT: PETITIONER:

GEORGE PAUL, S/O.PAILY, AGED 26/2003,
HIGH SCHOOL ASSISTANT, MAR ATHANESIOUS HIGH
SCHOOL, NEDUMBASSERY, ATHANI P.O. ALWAYE.

BY ADV. GEORGE PAUL(PARTY-IN-PERSON)

RESPONDENTS: RESPONDENTS:

1. STATE OF KERALA, REP. BY THE SECRETARY
TO GOVERNMENT, DEPARTMENT OF GENERAL EDUCATION,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.
2. THE DIRECTOR OF PUBLIC INSTRUCTION,
TRIVANDRUM.
3. THE DISTRICT EDUCATIONAL OFFICER,
ALWAYE.
4. THE MANAGER,
MAR ATHANESIOUS HIGH SCHOOL, NEDUMBASSERY,
ATHANI P.O. ALWAYE.
5. SAJUT.ABRAHAM, HIGH SCHOOL ASSISTANT,
MAR ATHANESIOUS HIGH SCHOOL, NEDUMBASSERY,
ATHANI P.O. ALWAYE.
6. JAMES PHILIP, MAR ATHANESIOUS HIGH
SCHOOL, NEDUMBASSERY, ATHANI P.O. ALWAYE.

7. FR.C.A. PAULOSE, MAR ATHANESIOUS
HIGH SCHOOL, NEDUMBASSERY, ATHANI P.O. ALWAYE.
8. BEENA VARGHESE, MAR ATHANESIOUS HIGH
SCHOOL, NEDUMBASSERY, ATHANI P.O. ALWAYE.
9. FR.M.M.VARGHESE, MAR ATHANESIOUS HIGH
SCHOOL, NEDUMBASSERY, ATHANI P.O. ALWAYE.
10. SONA CHERIAN, MAR ATHANESIOUS HIGH
SCHOOL, NEDUMBASSERY, ATHANI P.O. ALWAYE.

BY ADV. SRI.K.MOHANAKANNAN
SMT.A.R.PRAVITHA
SRI.P.K.MANOJKUMAR
SRI.RESMI RAMACHANDRAN
SRI.KRB.KAIMAL (SR.)
SRI.ABRAHAM VAKKANAL
SRI.SAJI KURIACHAN
SRI.M.R.NANDAKUMAR
SRI.PAUL ABRAHAM VAKKANAL
SRI.BABU PAUL
GOVERNMENT PLEADER SRI. BENNY GERVASIS.

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD
ON 21.3.2007, THE COURT ON THE SAME DAY, DELIVERED THE
FOLLOWING:

W.A. 527/2007

:3:

ORDER ON I.A. NO. 375/2006 IN W.A. 527/2005

// DISMISSED//

21.3.2007.

SD/-, P.R. RAMAN, JUDGE.

SD/P, ANTONY DOMINIC, JUDGE.

// TRUE COPY //

P.S. TO JUDGE.

P.R. RAMAN & ANTONY DOMINIC, JJ.
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W.A. NO. 527 OF 2005
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DATED THIS, THE 21ST DAY OF MARCH, 2007.

J U D G M E N T

Raman, J.

Appellant is the petitioner in W.P.(C) 37565/2003. The writ petition was filed inter alia seeking to quash Ext.P7 Government Order, or seeking its modification and for a writ of mandamus directing Respondents 1 to 4 to give promotion to the petitioner to the post of High School Assistant with effect from 2.6.1986 or with effect from 1.6.1988.

2. Petitioner was initially appointed as an Upper Primary School Assistant (UPSA) in the 4th respondent School on 2.6.1986 and was promoted as High School Assistant (HSA) in Physical Science on 1.6.1992. He is qualified in Bsc. (Physics) and B.Ed. His appointment was approved with effect from 2.6.1986 as evidenced by Ext.P1. In the year 1986, there arose four retirement vacancies of High School Assistants in the School. The Manager appointed Respondents 5 to 8 as HSA. Respondents 9 and 10 were working as UPSA in the school. Petitioner, along with respondents 9

and 10 is contended to be entitled to get promotion as HSA as per Rule 43 Chapter XIV A of the Kerala Education Rules. Representations made to the third respondent challenging such appointment, however, were rejected and approval granted to such appointment on 20.9.1998. Appeal preferred to the Department was also rejected. The revision filed before the Government was also dismissed rejecting the claim of the petitioner. He then filed O.P. 1572/1990 and the 9th respondent filed O.P. 1571/1990 before this Court, which were disposed of by Ext.P2 common judgment, allowing the original petition filed by the 9th respondent and dismissing that of the petitioner. Against such dismissal, petitioner filed W.A. 412/1995. Other aggrieved parties also filed writ appeals. After referring to the decision in *Philomina V. Babu Varghese* (2001 (2) KLT 519), those writ appeals were disposed of by this Court, as per Ext.P3 judgment, directing the Government to look into the question of seniority and the subject requirement and pass appropriate orders within a time frame. As per Ext.P3, Fr. M.M. Varghese and Sona Cherian were found to be accommodated as Social Studies Teachers. Though this Court noticed that the case of the petitioner was to be considered, the Department took the view that he did not have the service as UPSA. Nothing is stated in the said judgment regarding the view taken by the Department either way. Pursuant

to the judgment in the writ appeal, the Government passed Ext.P4 order (G.O.(Rt) No. 997/03/Gl. Edn. dated 14.3.2003, holding that the appointment of Fr. C.A. Poullose as HSA (SS) and Beena Varghese as H.S.A. (Maths) were irregular as those were made overlooking two Rule 43 claimants. Further, at that distance of time, it was found not proper to oust the teachers who had got approval from 1986-87 onwards and continuing as such. Hence Fr. Varghese and Smt. Sona Cherian were given notional promotion with effect from 1986-87 without any back arrears. However, nothing is seen stated about the case of the appellant. Apart from that, even in the writ appeal, no specific direction is seen issued touching his claim. In such circumstances, he filed W.P.(C) 16330/2003 seeking to quash Ext. P4 and for a direction to dispose of Ext.P5 produced therein and to give him promotion as HSA with effect from 2.6.1986 or with effect from 1.6.1998. The said writ petition was disposed of by Ext.P6 judgment on 29.5.2003. Ext.P5 referred to therein is a statutory revision filed by the appellant against the decision taken by the Government. It was observed that there may be other review petitions pending as well and the Government was directed to dispose of Ext.P5 and all other petitions pending before it in the order of priority within a time frame. Pursuant thereto, Ext.P7 order was passed by the Government on 13.10.2003. From the facts as stated in

Ext.P7 Order, it would appear that there were four vacancies as on 2.6.1986 as against the two vacancies, the Manager appointed Sri. Saju T. Abraham and Fr. C.A. Paulose and one of the remaining vacancies was filled up by appointing Sri. James Philip and Smt. Beena Varghese was appointed on 1.7.1986 in the last vacancy. But the same was not approved as there were other claims including claims under Rule 43 namely, Fr. M.M. Varghese and Smt. Sona Cherian. It was after rejecting the claim made by these persons under Rule 43 that appointments were made. Though the District Educational Officer rejected their claim, it was allowed by the Director of Public Instruction. Government set aside the order of the DPI and several petitions and counter petitions were filed by the affected parties before the Departmental Authorities and Government and several orders were issued in the matter. The aggrieved parties took up the matter before this Court and litigation continued unabated.

3. After referring to the historical background, but to the great dismay, whether the appellant has got any legitimate claim to any of the four vacancies was never dealt with by the Government, while issuing Ext.P7 order except to record the contention by the Manager that the revision petition filed by the appellant was liable to be dismissed since there was no merit in it. When the appellant had been running from pillar to post for

consideration of his claim, and there is a direction issued by this Court in last of its judgment, Ext.P6, Government owed a duty to consider and dispose of the same either upholding or rejecting his claim. That is the minimum which has to be done, but however did not do even while passing Ext.P7 order. It was in these circumstances, that the appellant preferred the writ petition inter alia contending that Government did not consider and pass orders on the claim raised by him. One of the prayer is to quash Ext.P7 order and the other is for a direction to Respondents 1 to 4 to give promotion to the appellant to the post of High School Assistant as stated earlier.

4. Other persons who were aggrieved by Ext.P7 have filed writ petitions W.P.(C) Nos.24221/2003 and 36787/2003 which were disposed of by a common judgment. Referring to the case of the petitioner, in para 8 of the judgment impugned in this appeal, the learned Single Judge held as follows:

"I feel that having regard to all the facts and the position as regards the vacancies in 1986 of HSAs having become crystallized, the Government should have considered whether the petitioner is entitled to be accommodated as HSA as on 1.6.1988. Accordingly, there will be a direction to the Government to consider the contention of the petitioner that he is entitled to be promoted as HSA with effect from 1.6.1988. Of course, any relief in

this matter to the petitioner can be granted only after all the affected parties are given notice and heard....."

5. The appellant argued the matter at length and contended that the learned Single Judge ought not have remanded the case for consideration by the Government instead should have granted him the relief of promotion with effect from 1.6.1988. We find that the Departmental Authorities never considered the contention put forth by him and passed any orders with reference to his entitlement for promotion. Appellant had come to this Court on earlier occasions as well and as we have already noticed, in the last of the judgment there was a specific direction to the Government to consider his revision petition and despite the Government did not consider his contention on merits and pass any orders. We are not at all satisfied with the inaction on the part of the Government in spite of the direction issued by this Court in not considering the claim put forth by a Teacher working in the School claiming promotion to the post of HSA. He may or may not have a claim; but certainly his contentions should have been gone into and a decision taken on such contentions either accepting or rejecting the same with reasons therefor. That has not been done in this case. For not fault of his, appellant had to file writ petitions specifically for that

purpose. But at the same time, this Court cannot possibly consider the claim as put forth by him straight away, especially when the matter relates to appointment to the post of HSA and when there were four vacancies to which rival claims were made, necessarily without hearing all such persons regarding their right, if any, a final order could not have been passed. But the learned Single Judge has now directed to consider the claim of the petitioner's promotion as on 1.6.1988. This, however, will save the right, if any, of the claimants who sought appointments from 1.6.1988.

6. The learned Single Judge has only directed such consideration to be made by the Government after hearing the affected parties. However, the learned Single Judge has not fixed any time limit. Considering the fact that the claim itself relates to 1988 there cannot be any delay in the matter of considering the claim of the appellant. In such circumstances, the only modification that is required to be made to the judgment impugned in this appeal is to fix a time limit within which final orders are to be passed by the Government.

7. Accordingly, we direct that Government shall pass final orders on the claim made by the appellant herein after hearing the parties who are likely to be affected in case his claim is to be upheld on merits. This shall be done as expeditiously as possible, at any rate, within a period of three

months from the date of receipt of a copy of this judgment. The appellant is entitled to produce a copy of this judgment before the Government and the date of receipt of certified copy will be deemed as receipt of the copy from the appellant.

P.R. RAMAN,
(JUDGE)

ANTONY DOMINIC,
(JUDGE)

knc/-